Supreme Court of the United States.

JOHN WATT & COMPANY, PLAINTIFFS IN ERROR,

vs.

ISAAC B. KIRTLAND, DEFENDANT IN ERROR.

No. 225.

WILLIAM MARVIN, *Counsel for Plaintiffs in Error.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.
1867.

Supreme Court of the United States.

John Watt & Company, Plaintiffs in Error, *vs.* Isaac B. Kirtland, Defendant in Error.	*No.* 225.

On the 18th of March, 1865, Isaac B. Kirtland, of New-York, instituted his suit, by filing his petition in the Circuit Court of the United States for the Eastern District of Louisiana, against the commercial firm of John Watt & Co., described as located in New-Orleans, and composed of John Watt, Michael Musson, Andrew Watt and James L. McLean, to recover twenty-nine thousand and five hundred dollars, with interest, being so much money collected or received, as is alleged by the defendants.

The plaintiff alleges in his petition—

1. That on the 25th day of February, 1862, he had enclosed from Memphis, in Tennessee, E. E. Clark's draft on the defendant for ten thousand dollars, and that on the 1st day of March, 1862, the defendants wrote to the plaintiff, acknowledging the receipt of the draft, and informing him that the amount had been passed to his credit, and was subject to his order at any moment.

2. That on the 25th day of March, 1862, the plaintiff enclosed to the defendants for collection a draft on Messrs. John Wood & Co. for ten thousand dollars, and that the same was collected by the defendants.

3. That on the 10th day of April, 1862, the plaintiff enclosed to the defendants a draft on John Wood & Co. for the sum of nine thousand and five hundred dollars, which was collected by the defendants.

The defendants in their answer to the petition admit the writing of the letters acknowledging the collection of the drafts, and they aver as to E. E. Clark's draft, the first draft mentioned in the petition, that the said Clark had, previously to his drawing the draft upon them, left in their hands ten thousand dollars in notes of the so-called Confederacy, advising them, at the same time, that, on his return to Memphis, he should draw on them for the amount deposited.

That as to the drafts drawn on John Wood & Co., the one for the sum of ten thousand dollars, and the other for the sum of nine thousand five hundred dollars, the defendants in their answer aver, that the plaintiff, at the time, was well aware that no notes were current but the notes of the so-called Confederacy, and that plaintiff well knew when he drew the drafts and remitted them to the defendants for collection on his account, that they would and must be paid in that currency, and that when defendants advised him that the drafts had been paid and the amount passed to his credit, it was so passed and credited in that currency.

The defendants also aver, that after the collection of these drafts, and particularly on the 21st day of May, 1862, and the 4th day of June, 1862, and on other days, they had reminded the plaintiff that the amount to his credit, as he well knew, had been collected in these Confederate notes, and they requested his instructions in relation thereto; to which request the plaintiff paid no attention.

The defendants allege that they have always been ready to surrender to plaintiff the notes by them received on his account, which have been in their possession from the time they were received by them; and they deny that they are indebted to the plaintiff in any other form than as above stated, or

that they can be compelled to pay him the amount of his demand in current funds or legal tender.

No replication was filed to the defendants' answer. On the 5th of May, 1865, the cause was called for trial, when the defendants' counsel applied to the court for continuance of the cause, on the ground of the absence of a material witness. The motion was denied, and the defendants excepted; whereupon the trial proceeded before the court, and without a jury. (Record, top page 7.) The plaintiff, it appears, gave in evidence the letters of the defendants, numbered 1, 2, 3, and Document 4, filed with the petition. The defendants' counsel gave in evidence the letter marked Document 5. (Record, top page 7.) The defendants' counsel also offered in evidence four letters written by the plaintiff to the defendants, respectively, in March, 1862, April, 1862, May, 1862, and March, 1863, with the view to prove that the drafts which form the basis of the plaintiff's demands were drawn against Confederate currency. (See the letters, pages 11 and 12.) The court refused to admit these letters in evidence, on the ground "that the defendants having collected the drafts and credited them on account to plaintiff, they had made themselves responsible to him for payment whenever he should choose to demand the proceeds from them." To this ruling of the court, the defendants' counsel excepted. (See the bill of exceptions, pages 10 and 11.) The defendants' counsel also excepted to the ruling of the court refusing to grant a continuance of the cause.

On the 15th of May, 1865, the court gave judgment in favor of the plaintiff for $20,500, with interest thereon at the rate of five per cent. per annum from the 1st May, 1862, until paid, and costs of suit. (Record, page 7.) On a subsequent day the defendants' counsel moved for a new trial, on the ground of newly discovered evidence. (Page 9.) The court denied the motion. (Record, page 12.) The defendants sued out a writ of error returnable in this court.

Point I.

The judgment ought to be reversed.

1st. Because the petition or declaration alleges no sufficient

cause of action. It alleges no contract, no consideration nor promise. It alleges no title in the plaintiff to the drafts nor to the money collected, nor does it allege that the defendants had received the money to the plaintiff's use. The plaintiff may have enclosed the drafts, and the defendants may have collected them, and yet the plaintiff may have had no title to the drafts or to the money collected. 2d. The petition or declaration does not allege any indebtedness by the defendants to the plaintiff in any sum of *lawful money of the United States*, but only in so many dollars, without defining or describing the dollars. Nor does it allege that the dollars mentioned in the drafts or the dollars collected by the defendants were *lawful money of the United States*. For aught that appears, the dollar mentioned in the drafts and the dollar collected may have been a German, a Spanish, a Danish or an American dollar, possessing more or less value as compared with lawful money of the United States. These defects are defects of substance, and are not cured by the verdict. (Candler *vs.* Rossiter, 10 *Wendell*, 487.) As to the necessity of alleging that the money was lawful money of the United States, see 2 *Chitty's Pleadings*, pages 12, 13 and 37, of the 7th American edition from the 6th London edition.

Point II.

Notwithstanding the verdict, the judgment ought to be reversed, and judgment rendered for the defendants on the pleadings. For the defendants, in their answer, set up new matter, constituting a good and substantial defence on the merits, and the same is not denied or replied to, and is therefore admitted by the plaintiff.

Point III.

The court will take judicial cognizance of the facts that the rebel government of the insurgent States issued bills of credit or promissory notes, designed to circulate as money, in which the Confederate States of America promised to pay

the bearer, on demand, two years or six months, or some other period of time, after a ratification of a treaty of peace, the number of dollars specified in the bill or note, and that these bills or notes were used by the rebel government and people as a currency, in carrying on war against the United States. The defendants stood ready to prove that the article deposited in their hands by E. E. Clark, and the article collected by them on the two drafts, consisted of these illegal and unconstitutional bills or notes, and that this fact was known to the plaintiff and ratified by him. But the court rejected the testimony by deciding that the defendants had made themselves liable by the fact of crediting the plaintiff with the nominal or numerical amount deposited and collected. In this decision there was error ; for the money deposited or collected, if it may be called money, being unconstitutional and illegal, possessed no legal value. Its receipt or deposit created no legal indebtedness or obligation. The proof offered, therefore, went to the foundation of the suit. Besides, the dealing in this currency by the parties was an illegal transaction, injurious to the interests of the United States, and the maxims apply, *ex turpi causa non oritur actio, sed in pari delicto melior est conditio possidentis.* (Simpson *vs.* Bloss, 7 *Taunton*, 246; Beldin *vs.* Pitkin, 2 *Caines* (*N. Y. Rep.*) 147 ; 4 *Hill N. Y. Rep.* 349.)

Point IV.

The defendants were voluntary agents, without compensation for the collection of the drafts. They had collected them in Confederate currency, with the knowledge and approval of the plaintiff, and had placed the proceeds, in kind, to the credit of the plaintiff in that currency. This did not make the defendants debtor to the plaintiff, but trustees only, to deliver in kind whatever was collected or deposited. The defendants aver that E. E. Clark *deposited* with them ten thousand dollars in notes of the so-called Confederacy, and then drew against that deposit in favor of the plaintiff, and that the other drafts had been collected and credited to the plaintiff, as the plaintiff well knew, in that currency, and that "they have always been ready to surrender to the plaintiff

the notes by them received on his account, which have been in their possession from the time they were received by them." These facts constitute a good defence to the action; or if not, they were admissible in evidence in reduction of the amount of the debt or damages. In either point of view, the court erred in deciding that the defendants had rendered themselves liable to pay, in lawful money of the United States, by crediting the plaintiff with the amount, without regard to any of the other facts set up in the defence, thereby excluding evidence of these facts. The court rejected the defence and the evidence in proof of it. In this there was error; for it was competent for the defendants to prove the nature, character and value of the credit given and how it arose.

Point V.

The court erred in ruling out the testimony contained in the four letters, offered in evidence by the defendants, with a view to prove the allegations contained in their answer. These allegations, in substance, were, that the drafts were drawn against Confederate currency, were to be paid in Confederate currency, and had been collected and received by the defendants in Confederate currency, with the knowledge and approbation of the plaintiff. Whatever this currency was, or whatever value it possessed, if any, the defendants could not be held liable in lawful money of the United States for any more than the value of the Confederate currency received by them. Suppose those drafts had called for the payment of so many thalers, or francs, or so many pounds sterling, proof would have been admissible, and indeed necessary, to show the value in lawful money of the United States of the thaler, or franc, or the pound sterling. So, also, proof was admissible to show the value in lawful money of the United States of the dollar in Confederate currency. The error lies in considering a "dollar" in Confederate currency to be the same thing as a "dollar" in Federal currency; whereas, they were very different things, and possessed very different values. The court decided, "That the defendants, having collected the drafts, and credited them on account to

the plaintiff, they have made themselves responsible to him for payment whenever he should choose to demand the proceeds from them." This decision shut out, not only the evidence of the four letters contained in the bill of exceptions, one of which at least proves that the drafts called for "currency," but it also shut out all proof of the defendants' allegations as to what that currency was, and what its value in Federal currency was. Suppose, for the sake of the argument, that the defendants had credited in account with the plaintiff the proceeds of these drafts, and so had rendered themselves liable, according to the decision of the court below, to pay at any time, still the question would be, liable to pay how much, and what? The *credit* was given in a currency unknown to our laws. The liability to pay, it would seem, must be either to pay in the same currency or to pay its value, if any, converted into lawful money of the United States. The case is not like the case of increased or diminished liability, growing out of fluctuations in the value of a currency legally the same. The two currencies here in this case were not legally the same. Whether the Confederate currency possessed the sanction of any government *de facto*, or any legal existence or legal value; whether it consisted of coined gold or silver, or lead, or iron, or stamped paper, or whether it possessed any intrinsic value, or only an imaginary one, are all, in the view that I am now taking of the case, questions possessing, perhaps, but little or no importance, any further than as their consideration may be necessary to determine the value of this currency in Federal money. The dealings and transactions of the parties were in Confederate currency, the indebtedness, if any, was in that currency, and as the judgment of the court could not be rendered in that currency, it follows, that the court erred in not receiving proof of its value in a currency in which the judgment could be rendered.

When a cause is tried before the court, exceptions to the decision of the judge, in admitting or rejecting testimony, may be taken in the same manner as when the trial is before a jury. (*Act of Congress*, 3d March, 1865, *Statutes at Large*, vol. 13, p. 501; 2 *Brightley's Digest*, 75; 17 *Howard*, 6.)

Point VI.

There is error in the judgment in awarding interest on the principal from the 1st May, 1862, there being no allegation in the plaintiff's petition, or proof of any demand upon the defendants or their refusal to pay, or that the defendants have converted the money to their own use, or had used the same.

WM. MARVIN,

Counsel for Plaintiffs in Error.

U. S. SUPREME COURT.

JOHN WATT & CO., Plaintiffs in Error,

versus

I. B. KIRTLAND, Defendant in Error.

L. MADISON DAY, *Attorney.*

U. S. SUPREME COURT.

JOHN WATT & CO., Plaintiffs in Error,

vs.

I. B. KIRTLAND, Defendant in Error.

This was a suit brought to recover $29,500, with interest, being the proceeds of three drafts remitted for collection by I. B. Kirtland to John Watt & Co., and by them collected in 1862, and placed, as stated in their letters to Kirtland, to his credit.

There was judgment in the Circuit Court in favor of the plaintiff, and the defendants have brought the case to this court by writ of error.

I. The first exception is, that the Circuit Court *erred* in not allowing a continuance of the case as requested by the defendants.

But this exception must be wholly unavailing, for the law is well settled that the refusal of the lower court to continue a case *cannot be assigned for error.* Woods vs. Young, 4 Cranch R. 237; Sims vs. Hundley, 6 How. R. 1; Barow vs. Hill, 13 How. R. 54.

In Barrow vs. Hill, 13 How. 56, Chief Justice Taney says: "It has been repeatedly decided in this court, that a motion for the continuance of a cause addresses itself to the sound judicial discretion of the court, and its decision, for or against the motion, cannot be assigned as error in this court. The rule is so familiar in practice, that it is unnecessary to refer to cases to prove it. The decision of the Circuit Court, therefore, upon the motion above mentioned, is no ground for reversing the judgment, and does not afford any reasonable foundation for suing out this writ of error."

But it may be said, in order to escape from the conclusiveness of the forogoing authorities, that inasmuch as the court ruled on the application for a continuance, "that the testimony of the witness Clark would not avail defendants on their defence, from the fact, that having collected said drafts and credited them on account to plaintiff, they had made themselves responsible to him for payment," the above rule as laid down by this court dos not apply.

Such a position, it seems to us, is wholly untenable, and would, if established, amount to a total overthrow of the rule itself. Were such, however, the law, we submit that there is no error in the ruling of the court, that the evidence if obtained would have constituted no ground of defence.

And to demonstrate this, we have only to refer to the bill of exception for a statement of what it was expected Clarke would prove, viz: "That the

amount of ten thousand ($10,000) against which plaintiff remitted his first draft, was by the said E. E. Clarke, deposited in Confederate notes to plaintiff's knowledge, and that said draft was paid for by plaintiff to said Clark in that currency."

Such being the statement of what it was expected Clarke would prove, is it not a self-evident proposition that theruling of the court, as a matter of law, was correct?

It was wholly immaterial to plaintiff what Clarke had deposited with defendants, or whether he had deposited anything.

It was also immaterial to defendants what plaintiff paid Clarke for the draft. That was a matter purely between Clarke and plaintiff. It was a matter of no concern to defendants.

They accepted and honored the draft, and at once wrote plaintiff that they had placed the amount to his credit, subject to his order at any moment. This, then, must preclude all inquiry, so far as plaintiff is concerned, as to the kind of funds deposited, or whether any funds at all had been deposited by Clark with defendants. And it must also preclude any inquiry as to what plaintiff paid Clarke for the draft. For once a draft is accepted and taken up by the drawee, and the proceeds passed to the credit of the holder, the drawee is absolutely and unqualifiedly bound to the holder for the full amount of the same. It is then wholly immaterial to the holder whether or not the drawer

ever had any funds in the hands of the acceptor. An acceptance without funds is as binding and conclusive as an acceptance with funds. Once the acceptance is made, the obligation of the acceptor to the holder is absolute and unqualified

It matters not, then, to the holder, whether there was any consideration or not as between the drawer and acceptor for the acceptance. And it also matters not to the acceptor what the holder paid the drawer for the draft. For it has even been held, that the *voluntary* transfer of a claim, by the creditor to a third party, constitutes no ground of defence to the debtor, as his liability to pay is neither increased nor diminished by the transfer. Harrison vs. Wilson, 5 Rob. (La.) R. 275.

In Garland vs. Rives, 4 Rand. 307, 312, the Supreme Court of Maryland says: "The invariable maxim of equity is, that he who asks equity must do equity. But, this maxim is confined exclusively to the cases in which there is an equity between the parties; where although the plaintiff is entitled to relief, he yet owes, in conscicence, (although possibly not all,) a debt or duty to the defendant. Francis' Max. 1. In such case relief is given on the condition that the plaintiff does what in conscience he is bound to do, to the defendant. An equity which any third person may have against the plaintiff, can never be available, under this maxim, to the defendant."

And in the case of Turner & Co. vs. Brown, 3

Smedes & Mar. (Miss.) R. 437–8, Chief Justice Sharkey says: "This suit was brought by John C. Turner & Co. for the use of Robert Edrington, administrator, on a promissory note for $919, made by defendant. During the trial, a witness was permitted to state that he had heard Edrington, the assignee, say that he had given Turner & Co. $125, in Brandon money, for the note. The plaintiff objected to the admission of such testimony, but the objection was overruled. This was error. As between the assignee and the maker, it was immaterial what was paid for the note. The price he paid did not diminish the defendant's liability. She contracted to pay so much, and by the assignment, the assignee became entitled to the amount of the note. As between the assignee and assignor, the question might be different."

So, by the acceptance, the acceptor becomes absolutely bound to the holder to pay the amount of the bill. This liability is neither increased nor diminished by what the holder paid the drawer for the draft. As between the holder and the drawer, the question might be different.

It is a matter, therefore, of no concern to defendants what plaintiff paid for the $10,000 draft. That is a matter purely between the plaintiff and the drawer of the bill, and constitutes no ground of objection or defence on the part of defendants.

The ruling of the Circuit Court, then, that the evidence of Clarke, if obtained, would constitute no

ground of defence, is undoubtedly correct, even were it the subject of review in this court.

II. The refusal of the Circuit Court to grant a new trial, is not a ground for a writ of error.

In Barr vs. Gratz's Heirs, 4 Wheaton's R. 220, Mr. Justice Story says: "The first error assigned is, that the court refused to grant a new trial; but it has been already decided, and it is too plain for argument, that such a refusal affords no ground for a writ of error."

And in Blunt, Lessee, vs. Smith, 7 Wheat. 272, Chief Justice Marshall holds this positive and conclusive language: "It is well settled that this court will not revise the opinion of a Circuit Court, either granting or rejecting a motion for a new trial."

III. Nor was there any error in the refusal of the Circuit Court to admit the letters in evidence which were offered by the defendants.

In the *first* place, they were irrelevant; and in the *second* place, they contained nothing that could, in any event, constitute a ground of defence to the action.

It is true, that letter No. 5 contains the following passage: "In relation to the matter of your letter, you will bear in mind, we sent you checks, not Confederate Treasury Notes. Said checks called for currency, and we are ready now to take the currency of your city or banks."

But this letter, so far from constituting a ground of defence to defendants, is directly the other way, and conclusive of plaintiff's right to recover.

In the late case of Osgood vs. McConnell, 32 Illinois R. , it was held that the term *currency* means bank bills, or other paper money, which passes as a circulating medium in the business community, as and for the constitutional coin of the country, and that the measure of damages in a suit, on an instrument payable in currency, is the number of dollars specified in the same, and evidence was not admissible to show that depreciated bank notes were meant. A like and similar doctrine has been held in Swift vs. Whitney, ("in currency,") 20 Ills. R. 144; Moore vs. Morris, ("in good current money of this State,") 20 Ills. R. 255; Trowbridge vs. Leaman, ("in currency,") 21 Ills. R. 101; Chicago M. & F. Ins. Co. vs. Keiron, ("certificate of deposit of Illinois currency payable in like funds,") 27 Ills. R. 501; Galena Insurance Co. vs. Kupfer, ("in current funds,") 28 Ills. R. 332; Marine and F. Ins. Co. vs. Tincher, ("currency,") 30 Ills. R. 399; Cockrill vs. Kirkpatrick, (note "in current money of Missouri,") 9 Missouri R. 688; Earl vs. Chittenango Bank, (in "New York State currency,") 24 N. Y. R. 548; Hulbert vs. Carver, (certificate of deposit of "Ills. C'y,") 40 Barb. R. 245; Morris vs. Edwards, ("note payable in current bank notes of the city of Cincinnati,") 1 Ham. (Ohio) R. 80.

The word "currency" means current money, which is gold and silver. Dugan vs. Campbell, 1 Ohio Cond. R. 56. The word current, as applied to bank notes, means such notes as are equal to cash, to gold and

silver. Keith vs. Jones, 9 J. R. 120; Judah vs. Harris, 19 J. R. 144.

Such being the meaning in law of the word "currency," there was no error in the refusal of the court to admit said letters in evidence, as letter No. 5 expressly states that said checks called for currency. The admission of this letter in evidence might have been of avail to plaintiff; but it certainly could not have been of any advantage whatever to the defendants.

For the law is well settled both in this and other courts of the highest respectability, that when money (bank bills, whether at or below par, which pass as and for money) is collected by one for another, and which, instead of being remitted or retained as a special deposit, is mingled with his other funds, and credited to the party from whom received for collection, the notes become the property of the party receiving, the relation of principal and agent ceases, and that of debtor and creditor begins, and the debtor cannot afterwards be allowed to discharge his liability in the notes or kind of bank notes received, but which have since become greatly depreciated. Marine Bank vs. Fulton Bank, 2 Wallace's (U. S.) R. 252; Marine Bank vs. Chandler, ("in current bank notes,") 27 Ills. R. 527; Marine Bank vs. Rushmore, (certificate of deposit of "Illinois currency, payable in like funds,") 28 Ills. R. 463; Hulbert vs. Carver, (do. of "Ills. Cy,") 37 Barb. 62; S. C. 40 Barb. 245.

There was no error then in the lower court refusing to admit the letters in evidence, as they afforded no ground of defence whatever to the action.

MERITS.

IV. The only remaining question for consideration is, the merits of the case as disclosed by the record.

The defendants admit, in their answers, as alleged in the petition, and as shown by their three letters to plaintiff, annexed to the same, and received in evidence without objection, the receipt of three drafts amounting in the aggregate to $29,500, and state *positively* in said letter, that they were paid on presentation, and that they had passed or placed the amount of each draft, in dollars, to the credit of Kirtland. subject to his order at any moment.

By this act on the part of defendants, the whole matter was passed into one of account between the parties, and the relation of debtor and creditor thereby fully and firmly established. And having thus voluntarily and of their own free will created the relation of debtor and creditor between themselves and plaintiff, they cannot now be permitted to change that relation to suit the varying circumstances of the times, so as to shift the loss, if loss there be, from their own shoulders to those of the plaintiff. For having voluntarily placed the amount of the money collected to plaintiff's credit, they thereby made it their own, and by so doing, not only had the right to use it, *but no*

doubt did actually use it as their own, at par, and for the whole amount.

On every principle of justice, therefore, defendants are bound to make good the whole amount to the plaintiff.—Marine Bank vs. Fulton Bank, 2 Wallace's R. 252.

And on the question of interest, all that is necessary to be said is, that according to express statutory provision in Louisiana, (Acts 1852, p. 95; Acts 1855, p. 352,) all debts bear interest from maturity, unless otherwise stipulated.

There was no error, therefore, in the Circuit Court allowing interest as specified in the judgment, as the whole amount collected was due and payable the moment the same was placed by defendants to the credit of plaintiff.

But, perhaps it may be assigned as a reason for the reversal of the judgment, that this case falls within the principle of Griswold vs. Waddington, 16 J. R. 483.

Now, the ruling in that case, and which is undoubtedly the law, was that all trade and intercourse by and between parties whose respective governments were at war with each other are unlawful, and hence the application of the maxim, "*ex turpi causa non oritur actio.*"

But the facts of this case do not bring it within that principle. Both parties, it is true, resided in the boundaries of the so-called Confederacy. The plaintiff and drawer of the bills, at the time of these transac-

tions, (as appears from the Record,) resided at Memphis, and defendants, at New Orleans. Both of these places, according to the President's proclamation declaring what States were in rebellion, were in the Confederacy.

Now, if one of the parties to this suit is liable to be treated and considered, in the eye of the law, as laid down by this court in the Prize Cases, 2 Black's R. 636, as an enemy of the United States by reason of his residence in the Confederacy, the other party must likewise be subjected to the same rule, and he also must be considered as an enemy.

If, then, both plaintiff and defendants under this rule be considered as enemies, how can the principle of Griswold vs. Waddington apply to this case? That was a case where the respective governments of the parties were at war with each other, and hence the contracting parties were technically enemies of each other. But under the ruling in the Prize Cases, both plaintiff and defendants were enemies of the United States, and hence are to be deemed as friends of each other at the time these transactions took place. And if this be so, there is no objection to plaintiff enforcing his rights in a court of justice; for we have yet to learn how friends who were technically or absolutely, if you please, enemies of the United States, can avoid making good their obligations and liabilities to each other, which were not created in aid of the rebellion. For, an enemy of the United States may contract or

incur a liability towards another enemy of the same, which the court, after the relation of enemies has ceased, and that of friends assumed, will enforce, provided the indebtedness of the party did not arise out of an aiding of the rebellion.

Now, nothing of that kind is assumed or pretended in this case. All that is said is, (*but of which there is no proof,*) that Clarke, who drew the first draft for $10,000, had deposited that amount, in Confederate notes, with defendants, and that plaintiff was aware of that fact when he purchased said draft from the drawer.

But, if this were true, how is it to be of any avail to defendants?

In their letter acknowledging the receipt of that draft, they say nothing whatever about Confederate money. But they do say, that Clarke's draft on them for ten thousand dollars ($10,000) had come to hand, and that they had placed that amount to his (Kirtland's) credit.

It matters not, then, after such an acknowledgment, what Clarke had deposited with the defendants, or whether he had made any deposit at all; and it matters not to Kirtland (so far as his right of recovery in this suit is concerned) whether Clarke ever had any funds or money whatever in the hands of John Watt & Co. By honoring the draft and placing the amount to the credit of Kirtland, they became absolutely indebted to him for that amount.

Kirtland had nothing to do with the dealings between

Clarke and the defendants. Clarke drew his draft in favor of plaintiff, on defendants, and they at once accepted the same and passed the amount to plaintiff's credit. By their own voluntary act, therefore, they are forever estopped, as far as plaintiff is concerned, from disputing their liability to him.

And in relation to the other drafts, it is simply said that they were, on their face, made payable in *currency*, and that by that was meant Confederate notes, but of which meaning no evidence whatever was, or could, according to the above authorities in reference to "currency," have been allowed.

Defendants themselves, however, assert that Confederate notes were perfectly current in New Orleans when they collected the amount of the drafts, made it their own, and passed the same to the credit of plaintiff. Being current then, as asserted by themselves, and passing as and for money when they collected the amount of the drafts and passed it to the credit of plaintiff, (*instead of remitting or making a special deposit for plaintiff's benefit,*) defendants cannot now be permitted to set up their own *unauthorized* and unlawful acts to defeat the claim of plaintiff.

Besides, if the defendants saw fit to give aid, countenance, and support to the Confederate cause, by dealing with others in Confederate notes. is that any reason why they should be allowed to set up as against plaintiff their own want of loyalty and good faith to the government of the United States, to defeat the

payment of a just debt, which they themselves have acknowledged in their letters, without any qualification whatsoever? Can they be allowed to make a scape-goat of plaintiff to bear off their sins of disloyalty into the Confederate wilderness, and thereby reap a reward at the expense of plaintiff, by proclaiming that they had voluntarily given aid, countenance, and support to the rebellion, by dealing with others in Confederate securities? Certainly not. Plaintiff might well know that defendants had been dealing with *others* in Confederate notes to aid the rebellion, without being at all affected thereby. As between defendants and *those* parties thus dealing in Confederate notes, and thus aiding the rebellion, the principle of Griswold vs. Waddington might apply; but it certainly can have no application to this case. For there is nothing in the record to *raise even a suspicion* that these transactions on the part of plaintiff had anything to do with the rebellion. They were simply ordinary business transactions, growing out of ordinary dealings of man with man, and as such were perfectly lawful between the parties.

Trade and intercourse was only prohibited between the loyal and disloyal States. They were not prohibited between the citizens of the disloyal States. Nor were such transactions void upon any principle of civil or international law, when not in aid of the rebellion.

And as both parties are now, according to the record, perfectly *loyal* to the United States, even if formerly

enemies under the technical rule above referred to, or even enemies in fact, there cannot now be any objection to the maintenance of this suit.

The judgment of the Circuit Court, therefore, must be affirmed with costs and damages, as there was no ground whatever for suing out the writ of error in this case, and which seems evidently to have been intended merely for delay.

All of which is respectfully submitted,

L. MADISON DAY,

Attorney.